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the use of the streets, which the company had accepted. *Held*, that *mandamus* does not lie. *City of Chicago v. Chicago Telephone Co.*, 82 N. E. 607 (Ill.).

Though ordinary contractual duties, even if owed to a state, are not enforceable by *mandamus*, duties imposed by municipal ordinances in granting to quasi-public corporations the use of streets are not contractual merely. *People v. Suburban R. R. Co.*, 178 Ill. 594. For, whether the grant is properly considered a franchise given by the municipality under authority delegated by the state, or, as in Illinois, a license sanctioned by the state, the duties are imposed as conditions of the grant of a public privilege and are legal obligations owed ultimately to the state. *Richmond, etc., Co. v. Brown*, 97 Va. 26; *Chicago, etc., Co. v. Town of Lake*, 130 Ill. 42. If, then, a relator seeks to enforce these duties by *mandamus*, the writ should be granted. *Richmond, etc., Co. v. Brown, supra*. For, even according to the early definition of *mandamus*, it lay for the enforcement of legal obligations imposed by statute or charter. *King v. Wheeler*, Cas. t. Hardw. 99. And the application of *mandamus* has been greatly extended. *Rex v. Barker*, 3 Burr. 1265; *American, etc., Co. v. Haven*, 101 Mass. 398. According to the modern notions, benefit to the general public from performance, it is submitted, is a circumstance in showing that obligations are enforceable by *mandamus*. But the present case reaches its erroneous conclusion by making such benefit the determining circumstance.

**NEGLIGENT MISREPRESENTATION — NEGLIGENTLY PREPARED ABSTRACT OF TITLE.** — The plaintiff alleged that the defendant company was engaged in making abstracts of title to realty; that it was customary for purchasers of realty, even though under no contract relation with the defendant, to rely thereon; and that the plaintiff was damaged by acting on a negligently defective abstract made by the defendant. The defendant demurred. *Held*, that the demurrer be sustained. *Thomas v. Guarantee Title & Trust Co., Oh.*, Circ. Ct. Cuyahoga Co., Nov. 18, 1907. See NOTES, p. 439.

**NEW TRIAL — GROUNDS FOR GRANTING NEW TRIAL — MOTION ON GROUND OF NEWLY DISCOVERED EVIDENCE UNACCOMPANIED BY AFFIDAVIT OF WITNESS.** — On a motion for a new trial on grounds of newly discovered evidence the applicant produced the affidavit of a person other than the witness as to statements made by a non-resident witness who had refused to make an affidavit. *Held*, that it is error to refuse to consider it. *Soebel v. Boston Elevated Ry. Co.*, 83 N. E. 3 (Mass.).

As the question involved is not the truth of certain evidence but its existence, and as no question of what should or should not be admitted at the trial is involved, the ordinary hearsay rule does not here apply. *Lansky v. West End St. Ry. Co.*, 173 Mass. 20; *contra, Sheppard v. Sheppard*, 10 N. J. L. 250, 254. In general, the facts upon which the motion is based must be shown by the best evidence. Therefore the affidavit of the witness from whom the newly found evidence is expected must ordinarily accompany the motion. *Cardell v. Lawton*, 16 Vt. 606. But the rule is subject to exceptions within the discretion of the court. And if the absence of such an affidavit can be satisfactorily accounted for, as where the witness is out of the state, and his affidavit cannot be obtained, any evidence that will convince the court that he can give important new testimony may be shown. *Smith v. Cushing*, 18 Wis. 295; *Read v. Staton*, 3 Hayw. (Tenn.) 159. Under these circumstances hearsay is admissible, and the affidavit of one who has heard the statements of the witness may be received. *Eddy v. Caldwell*, 7 Minn. 225.

**PUBLIC OFFICERS — DE FACTO OFFICERS — VALIDITY OF ACTS WHERE NO DE JURE OFFICE.** — The plaintiff was discharged from the police force by a police board created by a statute later declared unconstitutional. He now seeks reinstatement on the ground that the acts of its incumbents could not be valid as those of *de facto* officers, since there was no *de jure* board. *Held*, that he is not entitled to reinstatement. *Lang v. Mayor of Bayonne*, 68 Atl. 90 (N. J., Ct. Err. and App.).